

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JOSE L. ORTIZ-ROCHE

Plaintiff

Vs.

**PHYSITIAN CORRECTIONAL, CORP.
ET AL**

Defendants

Criminal No.23-1215 (FAB)

ANSWER TO AMENDED COMPLAINT

TO THE HONORABLE COURT:

COMES NOW co-defendant Physician HMO, Inc., also D/B/A Physician Correctional, through the undersigned attorney and very respectfully STATES and PRAYS:

I. PARTIES

1. Paragraph number I.1 of the amended complaint is admitted.

2. Paragraph number II.2 of the amended complaint is admitted. Physician HMO, Inc. is a private corporation duly organized under the laws of the Commonwealth of Puerto Rico, which is in charge of the operation and administration of the “Correctional Health Program” of the Department of Correction and Rehabilitation (DCR), pursuant to a professional services contract effective October 1st, 2018.

3. Paragraph number III.3 of the Amended Complaint is admitted.

II. JURIDICTION AND VENUE

1. As far as paragraph number II.1 of the amended complaint requires a response, it is hereby denied. The defendant argued has always agreed that the court has no jurisdiction since Plaintiff did not comply with 42 U.S.C. §1997 e(a).

2. As far as paragraph number II.2 of the amended complaint requires a response, it is hereby denied. The defendant argued has always agreed that the court has no jurisdiction since Plaintiff did not comply with 42 U.S.C. §1997 e(a).

III. ALLEGATION

1. Paragraph number III.1 of the amended complaint is denied. According to our records, Plaintiff was incarcerated on October 11th, 2007.

2. Paragraph number III.2 of the amended complaint is admitted in part. It is admitted that before been incarcerated Plaintiff underwent a surgical operation named “Craneoplastia”. After said operation Plaintiff developed Epilepsy.

3. Paragraph number III.3 of the amended complaint is admitted in part. It is admitted that Plaintiff suffers Epilepsy and that epilepsy may cause convulsions and other conditions.

4. Paragraph number III.4 of the amended complaint is admitted.

5. Paragraph number III.5 of the amended complaint is denied.

6. Paragraph number III.6 of the amended complaint is denied. Since defendant began to operate and administer the “Correctional Health Program”, Plaintiff has been under the care of specialist doctors for his health conditions, including internists, and most recently neurologist doctors.

7. Paragraph number II.7 of the amended complaint is admitted.

8. Paragraph number III.8 of the amended complaint is denied.

9. Paragraph number III.9 of the amended complaint is denied. The defendant has been receiving his medications in the regular and timely fashion.

10. Paragraph number III.10 of the amended complaint is hereby denied. Our record reflects, that Plaintiff never requested medical attention for suffering of convulsions except on one (1) occasion, in which he was referred to the Rio Piedras Medical Center, emergency room, for observation and Plaintiff refused to remain there because he claimed to feel good.

11. Paragraph number III.11 of the amended complaint is denied.

AFIRMATIVE DEFENSES

A. Plaintiff has failed to state a claim upon which relief can be granted against the appearing defendant.

B. The court lacks subject matter jurisdiction since Plaintiff failed to exhaust administrative remedies.

C. The alleged damage was not proximately caused by the appearing defendant.

D. The appearing defendant exercised due care in the exercise of its duties and provided medical treatment and care within the applicable medical standards.

E. The complaint is beyond the statute of limitations.

F. The appearing defendant reserves the right to raise any additional applicable affirmative defenses which may rise in the course of these proceedings.

WHEREFORE, the defendant Physician HMO, Inc. very respectfully requests from this Honorable Court to dismiss the complaint filed in the instant case.

I hereby Certify that a true and correct copy of the instant motion has been notified to all counsel of record through the electronic CM/ECF court's system.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on February 21, 2024.

Attorney for the Defendant

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